

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

Darrell M. Stewart,

Plaintiff

v.

**Indevus Pharmaceuticals, Inc., F/K/A
Interneuron Pharmaceuticals, Inc.;
Wyeth, Inc., F/K/A American Home
Products Corporation;
Wyeth Pharmaceuticals, Inc F/K/A
Wyeth-Ayerst Pharmaceuticals,
Inc., A Division Of American Home Products
Corporation; and Boehringer Ingelheim
Pharmaceuticals, Inc.,**

C.A. No. 04cv11228-GAO

Defendants

PLAINTIFF'S MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c), plaintiff hereby seeks to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County, where this action was originally filed. In support of this motion, plaintiff states that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Phamaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc., f/k/a Interneuron Pharmaceuticals, Inc. ("Indevus"), is a resident of Massachusetts and has not been fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint and supporting affidavits show that plaintiff has far more

than colorable claims against Indevus.

In support of this motion, plaintiff relies upon his consolidated memorandum filed in *Amadeo, et al v. Indevus, et al*, No. 04cv11039, and supporting documents. An individual affidavit will be supplied if deemed necessary.

In the event that this motion is granted, plaintiff requests that this Court issue an order requiring that the removing defendants pay plaintiff's just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

The Plaintiff
By his attorneys,

/s/ Michael S. Appel
Edward J. Barshak (BBO # 032040)
Michael S. Appel (BBO # 543898)
Samuel M. Furgang (BBO # 559062)
Sugarman, Rogers, Barshak & Cohen, P.C.
101 Merrimac Street, 9th Floor
Boston, MA 02114
(617) 227-3030

Samuel W. Lanham, Jr. (*Motion to admit Pro Hac Vice filed*)
Cuddy & Lanham, P.A.
470 Evergreen Woods
Bangor, ME 04401
(207) 942-2898

Neil D. Overholtz (*Motion to admit Pro Hac Vice filed*)
Aylstock, Witkin & Sasser, P.L.C.
55 Baybridge Drive
P.O. Box 1147
Gulf Breeze, FL 32562-1147
(850) 916-7450

Dated: July 7, 2004